

Mitchell & Slavens, Inc. and International Brotherhood of Painters and Allied Trades, Local Union 203, AFL-CIO, CLC. Case 17-CA-16366

November 26, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On March 10, 1993, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Mitchell & Slavens, Inc., to remit unpaid contributions to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund, to remit withheld dues that were deducted from the pay of unit employees pursuant to valid checkoff authorizations, and to make whole the unit employees for any expenses they may have incurred resulting from its failure to continue in effect all the terms of its agreement with the International Brotherhood of Painters and Allied Trades, Local Union 203, AFL-CIO, CLC. On June 21, 1993, the United States Court of Appeals for the Eighth Circuit issued its judgment enforcing the Board's Order.

A controversy having arisen over the amount of benefit fund contributions and union dues owed, on September 29, 1993, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated October 22, 1993, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 29, 1993, summary judgment would be sought. The Respondent filed no answer.

On November 8, 1993, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On November 12, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹ 310 NLRB No. 100 (not reported in Board volumes).

Ruling on Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the benefit fund contributions and union dues owed are as stated in the compliance specification and we will order payment by the Respondent of said amounts, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Mitchell & Slavens, Inc., Springfield, Missouri, its officers, agents, successors, and assigns, shall make whole the employees by paying the fringe benefit funds and the Union the amounts listed below, with interest:

Health & Welfare Fund	\$8,666.28
Pension Fund	5,416.43
Apprentice Training Fund	257.93
Union Dues	1,924.07

Dated, Washington, D.C. November 26, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD